

**Recommended Conditions of Approval – Vesting Tentative Map
2004-0023 Lockheed Martin**

A. Planning/General

1. Subdivider has filed an application for vesting tentative map approval of a subdivision of Lockheed Martin Plant 1, Parcel 1, located at 1111 Lockheed Martin Way, and identified as Santa Clara County Assessor's Parcels numbered 110-01-025, 110-01-031, and 110-01-029 ("the Property"). Subdivider is the owner of the Property. The Property is currently developed and has been used for a number of years by Subdivider for research, development and industrial purposes. The Property is currently subject to an existing Development Agreement, effective until February 9, 2010 (the "DA"), as well as a Site Master Use Permit ("SMUP"). These documents set forth overall site density development rights, limitations and development standards. In addition, the Property is subject to a Design Permit Agreement ("DPA") pertaining to the City's Mary Avenue extension project. (Hereafter these documents collectively shall be referred to as the "Preexisting Development Documents.") The Property currently has an internal traffic circulation system consisting of private, restricted-access roads, as well as a privately owned and operated drainage system and private utilities. The Property is included within the boundaries of the City's Moffett Park Specific Plan area and is zoned MP-TOD or MP-I. Notwithstanding the Moffett Park Specific Plan, the Preexisting Development Documents govern and control development of the Property.

2. Subdivider has not submitted any development plan or proposal in conjunction with the subdivision application. Approval of this subdivision does not convey any rights to a particular amount of development to any of the particular lots. Each of the lots created by this subdivision remains subject to Preexisting Development Documents as applicable. Any future development proposed for any of the lots will need to be evaluated on a project-specific basis, in light of the Preexisting Development Documents, and may require subsequent environmental analysis and permits prior to any approval.

3. This application is conditionally approved, generally as shown on the Vesting Tentative Map received May 12, 2005 by the Community Development Department for 4 lots and a remainder parcel on the approximately 304 acre site. Unless otherwise indicated, the following conditions of approval require compliance prior to filing the final map, or filing of the first final map, if multiple final maps are utilized.

4. The approval shall be valid for a period of two years, measured from the date of approval of the tentative map by the final review authority, unless extended pursuant to the procedures set forth in the Sunnyvale Municipal Code ("SMC").

5. Subject to the Preexisting Development Documents, which shall be controlling in all cases to the extent legally permissible, all activities undertaken in accordance with this vesting tentative subdivision map shall comply with the City's general plan and municipal code. In cases of conflict between the City's municipal code, these conditions of approval, or map-specific conditions of approval, the governing priority shall be, to the extent legally permitted, as follows: 1) map-specific conditions, 2) conditions of approval, and 3) municipal code regulations.

6. All mitigation measures adopted during environmental review of the subdivision are incorporated by reference into these conditions of approval..

7. Pursuant to Government Code Section 664741.9, the Subdivider, or any agent thereof, or successor thereto, shall defend, indemnify, and hold harmless the City, its officials, employees or agents (collectively "City") from any claim, action or proceeding to attack, set aside, void, or annul, the City's approval concerning this subdivision map application, which action is brought within the time period provided for in Section 66499.37. The City will promptly notify the subdivider of any such claim, action, or proceeding and cooperate fully in the defense.

8. Any proposed Covenants, Conditions and Restrictions ("CC&Rs") relating to the subdivision shall be submitted for review and approval by the Director of Community Development and the City Attorney.

9. Prior to approval of any future development projects, the owners of each lot newly created by the subdivision will have a Burrowing Owl survey conducted by a qualified biologist to determine if burrowing owls are present on the project site. If a determination is made that burrowing owls are found to nest on the site, all work that could destroy such nests shall halt until the wildlife biologist has recommended appropriate actions to be taken to protect the owls and relocate the nesting sites at the appropriate time, if determined to be necessary. Relocation of the owls shall be completed in accordance with the biologist's recommendations and any applicable State laws.

B. Building Safety Division

1. Prior to issuance of any building permits, obtain Grading Permits as required (SMC 16.12.010).

2. Prior to issuance of any building permits, provide soils report prepared by a licensed soils laboratory (Resolution No. 193-76).

3. Prior to issuance of any building permits, seal and cap all septic tanks and abandoned irrigation systems in accordance with Building Safety regulations.

C. Public Works

1. Record the final map prior to any building permit issuance (SMC 18.38.030). Prior to map recordation, Subdivider shall provide detailed plans for City's approval of the street improvements and utility improvements as deemed necessary with all appropriate easements for access (Subdivision Map Act, SMC 18.08 and SMC 18.20).

2. The submittal, approval and recordation of the final map shall be in accordance with the provision of the California Subdivision Map Act and Sunnyvale Municipal Code Title 18 Subdivision requirements. (SMC 18.20)

3. If multiple final maps are filed, the boundaries of each final map and the extent of the improvement required for each final map is subject to approval by the City Engineer and Community Development Director.

4. The lot lines and easement lines on the final map shall be consistent with the tentative map. Subdivider shall submit a preliminary title report as required by SMC 18.20.050(b). If easements were inadvertently omitted from the tentative map, they shall be included on the final map. The final map shall reflect dedication of appropriate easements over the private streets/driveways for access, egress, water, sewer and other utility lines. The City Engineer has the discretion to approve minor modifications or adjustments to lot lines and easement lines on the final map.

5. All required improvements deemed necessary for the final map, including all public improvements (if any), private access roadways and essential private utility mains ("the Improvements") shall be constructed according to City standards and completed within ten years from the date of final map recordation. Prior to recordation of the final map, the Subdivider shall execute a Subdivision Agreement and provide securities, surety bonds and/or cash deposit(s), at the option of and subject to the approval of the Director of Public Works, to ensure completion of the Improvements within 10 years. Subdivider shall have an affirmative obligation to provide the City with evidence of valid security each year until all Improvements are constructed. (SMC 18.20.250 and 18.20.260) The Subdivision Agreement shall include a provision describing how

improvements will be constructed and secured in the event of conveyance of any of the lots prior to completion of the Improvements. The Subdivision Agreement shall include a provision permitting partial release of the obligations of Subdivider upon completion of a portion of the Improvements if Improvements on or surrounding any of the lots are constructed consecutively rather than concurrently. The Subdivision Agreement shall be recorded on each of the newly created lots.

6. Subject to the Preexisting Development Documents, and as provided in the Subdivision Agreement, Subdivider shall pay all applicable Public Works development fees associated with the final map and/or development improvements, including but not limited to, utility frontage and/or connection fees and off-site improvement plan check and inspection fees, prior to any type of permit issuance. (SMC 18.16)

7. This subdivision requires Conditions, Covenants, and Restrictions (CC&R's) to be recorded, with provisions including but not limited to the following items:

- a. All public/private easements shall be identified and/or defined.
- b. There shall be provisions for perpetual maintenance responsibilities of private roadways, private utilities, private street lighting, private landscaping, etc.
- c. There shall be provisions for perpetual maintenance of post-construction Best Management Practices in regards to the storm water management devices and plans approved for the site. (SMC 12.60.200)
- d. There shall be provisions for continued traffic circulation and roadway access among the subdivided lots.

8. Due to the nature of Subdivider's operations, the current road system on the Property comprises private streets owned and maintained by Subdivider. Subdivider has requested that the City allow a variance from its standard requirement for lot frontage along public streets, and allow the private streets and secured-access points along the perimeter of the Property to be maintained by Subdivider until any lots of the proposed subdivision are sold. In order to accommodate this request, Subdivider shall, concurrent with final map recordation, record a declaration on each of the lots stating that Subdivider, and all successors in interest waive any and all rights they may have under Government Code section 66462.5, including any right to require City to exercise its power of eminent domain to acquire public street access to any of the lots.

9. All access roadways for the lots shall be privately owned and maintained unless otherwise agreed to by City and subdivider. Any streets offered to City for dedication must meet City's applicable design standard at the time of dedication.

10. In the event any streets are offered and accepted by City for dedication, Subdivider shall record an encroachment agreement related to maintaining private utilities in a public street, as applicable.

11. Subdivider shall identify an access easement for emergency vehicle ingress-egress on the tentative map, and the final map shall reflect such easement.

12. Reservation of new and/or abandonment of existing public/private utility easement(s), ingress/egress easement(s) necessary for all lots shall be recorded with the final map to the extent possible, or reflected in the CC&Rs if necessary. (SMC 18.16.010(c)) No permanent structures shall be maintained or constructed within any such easements.

13. Subject to Preexisting Development Documents, any proposed development projects and/or building permit issuance is subject to additional conditions of approval deemed necessary for such project/permit application.

14. Public improvements shall be constructed in accordance with Sunnyvale Municipal Code Sections 18.08 and the Preexisting Development Documents, including but not limited to, curb & gutter, sidewalks, driveway approaches, curb ramps, street pavements, utility extensions and connections, meters/vaults, trees and landscaping, traffic signal/signs, striping, street lights, etc. as required by the Director of Public Works. (SMC 18.08)

15. As provided in the Subdivision Agreement, Subdivider or, following conveyance of lots, any new owner, shall pay for all applicable changes or modifications to existing city utilities, streets and other public utilities within or adjacent to lots, including but not limited to utility facilities/conduits/vaults relocation due to grade changes in connection with the proposed development on such lots. (SMC 18.20.250)

16. All public improvements, applicable private access roadways and private utility facilities shall be designed and installed per City's current design standards unless otherwise approved by the Director of Public Works. (SMC 18.12)

17. Any existing deficient public improvements shall be upgraded to current City standards as required by the Director of Public Works prior to acceptance by City of any such improvements or issuance of an occupancy permit, as applicable.

18. Subdivider shall obtain an encroachment permit with insurance requirements for all public improvements as required. (SMC 13.08.030, SMC 13.08.60 and SMC 13.08.070)

19. Utilities serving the lots require ultimate connections to all City utilities (including reclaimed water for irrigation purpose) or private utilities operating under a City franchise which provide adequate levels of service, unless otherwise approved by the Director of Public Works. (SMC 18.08.030, SMC 12.08.010) No City facilities shall be part of a segment of private utility lines.

20. If, in connection with the installation of new utilities, existing utility lines must be abandoned, such abandoned utilities shall be capped, abandoned, removed, relocated and/or disposed as required by the Director of Public Works.

21. As provided in the Subdivision Agreement, any proposed development projects and/or building permit issuance on any of the lots requires submittal of a detailed estimate of water consumption in gallons per day and peak water demand in gallons per minute, and estimate of sanitary sewer generation in gallons per day. Analysis for the cumulative impact of the sanitary sewer discharge associated with development projects and/or building permit may be required as needed.

22. All existing water, sanitary sewer and storm drainage connections serving the lots which are privately owned shall continue to be privately owned and maintained unless otherwise accepted by the Director of Public Works to be a public system within a public utility easement. The fire and domestic water connections on the parcels shall be privately owned and maintained beyond the meter. (SMC 12.24.080(c))

23. Existing and proposed overhead utility lines (electrical (other than the existing 120 kv electrical line), telephone and cable TV) on site and along street frontage shall be placed underground prior to occupancy of any new buildings. The undergrounding requirement shall be in compliance with the SMC 19.38.090.

24. All utility plans (PG & E, telephone, cable TV, fiber optic, etc.) shall be submitted to the Public Works Department for review and approval prior to the issuance of any permits for utility work within public right-of-way or public utility easements.

D. Traffic

The Preexisting Development Documents to which this Property is subject describe certain development entitlements, regulations and proscriptions, all of which are informed by the underlying environmental analyses pertaining to traffic impacts associated with potential development. Very generally, the Design Permit Agreement relates to the potential extension of Mary Avenue and imposes a requirement to reserve a portion of the Property for possible location of the Mary Avenue extension. The Development Agreement limits the intensity of development of the Property in relation to traffic impacts, and its underlying environmental impact report contemplates the need for the Mary Avenue extension if additional (that beyond the 750,000 square feet authorized by the DA and SMUP) development were to occur. The City, in conjunction with the Santa Clara Valley Transportation Authority, is currently overseeing a contract with BKF Engineers to analyze the preferred alignment for the Mary Avenue overpass and related environmental review. The City is considering, among others, two different alignments that would affect different parts of the Property. Barring unknown circumstances, the study and environmental impact report will be completed within the next two years, and the City Council will select a preferred alignment for the Mary Avenue extension within that timeframe. In order to both protect the City's ability to proceed with the Mary Avenue extension, and enable Subdivider to proceed with its requested subdivision, the following conditions of approval are included:

1. Mary Avenue Extension Offers of Dedication

A. Lot 1 is subject to all applicable provisions regarding the "Reserved Plot" set forth in the Design Permit Agreement dated September 10, 1985, and recorded on September 12, 1985 (referred to as "Existing Offer to Dedicate").

B.(i) The Final Map shall include an additional offer to dedicate a roadway right-of-way 150 feet wide along the entire eastern property line of the proposed Lot 1, which offer to dedicate is referred to as the "New Offer to Dedicate."

(ii) The New Offer to Dedicate is distinct from the Existing Offer to Dedicate. The New Offer to Dedicate, which overlaps with a portion of the Existing Offer to Dedicate at the southeast corner of Lot 1, and the Existing Offer to Dedicate may support alternative alignments for the potential extension of Mary Avenue.

2. Prior to Final Map recordation, Subdivider shall contribute \$250,000.00 toward preparation of the above-referenced Mary Avenue extension study and environmental impact report. That amount shall be credited against the costs payable to the City pursuant to paragraph 9 of the Design Permit Agreement. If Subdivider so requests, the City Council shall be required to accept and signify by resolution the credit to the obligation set forth in paragraph 9 of the Design Permit Agreement.

3. It is in both parties' interest to move forward as expeditiously as possible to select an alignment. Accordingly, it is the intent of City, and City shall use its best efforts, to complete the study and environmental review, and select a preferred alternative for the Mary Avenue extension within the next two years, by the close of 2007. Both parties recognize there may be unforeseen and/or uncontrollable circumstances, including for example, but not limited to, the failure of other involved public entities or agencies to take timely action related to the studies, appeals of the City's actions, or acts of *force majeure*, which may interfere with the City's ability to select a preferred alternative within the two year time frame. Accordingly, the New Offer to Dedicate and the Existing Offer to Dedicate shall remain in effect until the City Council selects a preferred alignment, even though this may extend beyond the close of 2007. If, after the close of 2007, the selection has not been made, and Subdivider believes City is not using its best efforts to complete the studies and select an alignment, Subdivider shall have the right any time thereafter to request a hearing before the City Council, to be held within 30 days of such request, seeking modification of this condition.

4. Once the preferred alternative is selected, and any time for appeal of the decision has expired, the City promptly shall take action to accept or reject, in whole or in part, the New Offer to Dedicate and the Existing Offer to Dedicate. The City shall accept only that portion of the right of way necessary to accommodate the selected alternative. If the City accepts the New Offer to Dedicate, the Subdivider and the City shall amend the Design Permit Agreement to reject, release and vacate the Existing Offer to Dedicate. If the City accepts the Existing Offer to Dedicate, it shall initiate proceedings to reject, vacate and release the New Offer to Dedicate. In each instance, if the City accepts a portion of the New Offer to Dedicate or the Existing Offer to Dedicate, the City shall also take action to reject, release and vacate any remaining interest in the unaccepted portion of the Offer to Dedicate. If the City fails to select a design alternative on or before February 9, 2010, the City shall take

action to reject, vacate or release, as appropriate, its interests in both the New and Existing Offers to Dedicate.

5. If, following recordation of the Final Map, the Subdivider sells Lot 1 to the adjacent landowner or to any entity that is directly or indirectly affiliated with the owner of the adjacent property, the City and the adjacent landowner may agree to relocate all or part of the right of way that is included in the New Offer to Dedicate to the adjacent property. In the event City and the adjacent landowner come to such agreement, the City shall initiate proceedings to vacate or release any portion of the New Offer to Dedicate not included in the relocated right of way.

E. Fire Prevention

Prior to issuance of building permits or occupancy permits for new construction, as applicable, the following shall be required:

1. Comply with the Sunnyvale Fire Prevention Code.
2. The water supply for fire protection and fire fighting systems shall be installed and operational prior to any combustible construction on the site (SMC 16.52.170).
3. The water supply for fire protection and fire fighting shall be approved by the Department of Public Safety. Fire hydrant locations to be approved prior to the construction of the H Street Extension (SMC 16.52.210).
4. Fire access drives and on-site fire protection systems shall be installed and operational prior to any combustible construction of the site (SMC 16.52.150).
5. Fire access drives shall have a minimum width of 26 feet. Inside turn radius on all corners is a 25-foot radius.